

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:DET:TL-N-3961-01
MELueck

date:

to: Barbara Greene, Territory Manager
(Large and Mid-size Business)
Attn: Dave Horton, Group 1693, Stop 20

from: Area Counsel
(Heavy Manufacturing, Construction and Transportation:Edison)

subject: [REDACTED] - [REDACTED] Interest Claim

This memorandum modifies and supplements our previous memorandum dated October 4, 2001, wherein we advised you that [REDACTED] was not entitled to overpayment interest while their account was in credit balance pending the application of a credit-elect to a future year.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the I.R.S. recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to I.R.S. personnel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on the I.R.S. and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

FACTS

[REDACTED] (hereinafter "[REDACTED]") timely filed its Form 1120, U.S. Corporate Income Tax Return, for the [REDACTED] tax year reflecting total tax due of \$ [REDACTED]. [REDACTED] requested

a refund in the amount of \$ [REDACTED] and a credit elect of the balance in the amount of \$ [REDACTED]. In [REDACTED], [REDACTED] filed Form 1120X, Amended U.S. Corporate Income Tax Return, indicating total tax in the amount of \$ [REDACTED], and additional tax was assessed and paid.

In [REDACTED], the Service, after examination, determined a deficiency in the amount of \$ [REDACTED] for the [REDACTED] tax year. This was in addition to the additional tax due reported by [REDACTED] on Form 1120X. In [REDACTED], an overpayment was determined for the [REDACTED] year in the amount of \$ [REDACTED]. This amount plus interest and credits (totaling \$ [REDACTED]) was then applied to the [REDACTED] year effective April 15, [REDACTED].

Following the above described credits and debits and consideration of the application of Rev. Rul. 99-40, I.R.B. 1999-40, to [REDACTED]'s credit-elect, [REDACTED]'s [REDACTED] account reflected a deficiency of \$ [REDACTED] from March 15, [REDACTED] to April 15, [REDACTED]. From April 15, [REDACTED] until September 15, [REDACTED], [REDACTED]'s [REDACTED] account reflected a credit balance of \$ [REDACTED]. After [REDACTED], [REDACTED]'s [REDACTED] account reflected a deficiency until [REDACTED] when a payment was credited to the account.

[REDACTED] now claims credit interest on the credit balance that existed in its [REDACTED] account from April 15, [REDACTED] until September 15, [REDACTED]. The Examination Division has requested advice on whether [REDACTED] is entitled to interest for this period.

LAW & ANALYSIS

[REDACTED] premises its claim to credit interest on the "use of the money" principle. [REDACTED] argues the Service had the use of its money from April 15, [REDACTED] (the date of the credit) until September 15, [REDACTED] (the date Rev. Rul. 99-40, I.R.B. 1999-40 required the credit-elect to be applied to [REDACTED]'s estimated tax for the [REDACTED] tax year). Compensation for the use of the money is the principal rationale for charging interest with respect to both underpayments and overpayments. See Manning v. Seeley Tube & Box Co., 338 U.S. 488 (1950); Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978); May Department Stores Co. v. United States, 36 Fed. Cl. 680 (1996).

In this case, [REDACTED]'s [REDACTED] account was put in overpayment status from April 15, [REDACTED] until September 15, [REDACTED] due to the credit of an amount from [REDACTED]'s [REDACTED] account. Internal Revenue Code Section 6611(b)(1) provides that interest is allowed, in the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken. See also

Marsh & McLennan Cos. v. United States, 50 Fed. Cl. 140 (2001). The due date of the amount against which the credit was taken was March 15, [REDACTED], the due date of [REDACTED]'s return for the [REDACTED] tax year. Thus, under I.R.C. § 6611(b)(1), [REDACTED] was only entitled to interest on the amount credited until March 15, [REDACTED]. However, the facts indicate that [REDACTED] received interest on this credited amount until April 15, [REDACTED]. Thus, it appears [REDACTED] has received interest for one month more than it should have.

It is not clear whether [REDACTED] requested that its entire overpayment from the [REDACTED] year be applied to the [REDACTED] year, or whether that decision was made by the Service. Clearly, the Service should have applied the [REDACTED] overpayment to any balance due for the [REDACTED] year. Any additional amount should have been refunded to the taxpayer or applied to another account with a balance due, unless the taxpayer requested different treatment. I.R.C. § 6402(a). In any event, [REDACTED] has acquiesced in this treatment. [REDACTED] has not filed a claim for refund for the [REDACTED] tax year or in any way requested that the full \$[REDACTED] not be applied to the [REDACTED] year.

The court in Marsh & McLennan Cos. v. United States, 50 Fed. Cl. 140 (2001), addressed a claim similar to [REDACTED]'s claim. In Marsh & McLennan, the taxpayer had overpayments in its 1985 and 1986 accounts and underpayments in its 1987 and 1988 accounts. The Service credited the taxpayer's 1985 overpayment and a portion of the taxpayer's 1986 overpayment to satisfy the taxpayer's 1987 underpayment. The Service accrued overpayment interest on these credits until April 15, 1988, the due date of the 1987 return. The Service credited the remaining portion of the taxpayer's 1986 overpayment to satisfy the taxpayer's 1988 underpayment. The Service accrued overpayment interest on this credit until April 15, 1989, the due date of the taxpayer's 1988 return. However, the taxpayer's 1987 account did not go into debit balance until March 15, 1989 and the taxpayer's 1988 account did not go into debit balance until September 15, 1989. The taxpayer argued it was entitled to accrue credit interest until March 15, 1989, on the amount credited to its 1987 account and until September 15, 1989, on the amount credited to its 1988 account. Thus, the taxpayer argued that the use of the money principle fixes the end date for the calculation of overpayment interest. The court disagreed.

Although the taxpayer's claim in Marsh & McLennan differed slightly from [REDACTED]'s claim, its analysis is applicable here as well. The taxpayer in Marsh & McLennan claimed interest for the overpayment years, 1985 and 1986. In this case, [REDACTED] is not claiming interest from the overpayment year, [REDACTED], it is claiming interest for the credit year, [REDACTED]. The court in Marsh &

McLennan stated that the "'use of the money' principle has not been applied to fixing the end date for the calculation of overpayment interest. The court cannot base a ruling under I.R.C. § 6611(b)(1) on the 'use of the money' principle when neither the relevant case law nor the plain language of the statute supports plaintiff's argument." Id. at 8. [REDACTED], like the taxpayer in Marsh & McLennan, requests the Service to apply the 'use of the money' principle to fix the end date for the calculation of interest. Specifically, [REDACTED] argues the 'use of the money' principle fixes September 15, [REDACTED], the date its [REDACTED] account went into debit balance, as the end date for the calculation of overpayment interest. This, as explained in Marsh & McLennan, is a misapplication of the 'use of the money' principle.

Although the court in Marsh & McLennan disagreed with some of the government's premises, it held "due date" under section 6611(b)(1) is "the last date fixed by law or regulation for the payment of tax (determined without regard to any extension of time)." Accordingly, in this case, where [REDACTED]'s [REDACTED] overpayment was applied in full to [REDACTED], and the taxpayer did not disagree with that application, the Service's use of the due date of the [REDACTED] tax year (March 15, [REDACTED]) as the end date for the computation of overpayment interest for an overpayment from the [REDACTED] tax year that was applied to the [REDACTED] tax year would have been proper. However, the taxpayer received interest for an extra month, until April 15, [REDACTED].

Moreover, [REDACTED]'s [REDACTED] account went into debit balance on September 15, [REDACTED] due to the credit of \$ [REDACTED] to [REDACTED]'s [REDACTED] account in accordance with Rev. Rul. 99-40, I.R.B. 1999-40. This amount was credited because [REDACTED] had claimed a credit-elect from its [REDACTED] account to its [REDACTED] account. Therefore, [REDACTED]'s claim to overpayment interest from April 15, [REDACTED] until September 15, [REDACTED] is akin to a claim to overpayment interest on a portion of its credit-elect amount. Treasury Regulation Section 301.6611-1(h)(2)(vii) provides, in part, if a taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited. [REDACTED] elected to have \$ [REDACTED] of its overpayment shown on its return credited. The Service credited this amount as of September 15, [REDACTED], in accordance with Rev. Rul. 99-40. Therefore, [REDACTED] is not entitled to overpayment interest on any amount not in excess of \$ [REDACTED]. Accordingly, [REDACTED] is not entitled to overpayment interest on its \$ [REDACTED] overpayment from April 15, [REDACTED] until September 15, [REDACTED].

[REDACTED]'s refund claim for [REDACTED] is for overpayment interest

only. [REDACTED]'s only argument is the "use of the money" principle, which does not apply. See Marsh & McLennan. In addition, Rev. Rul. 99-40 only applies to underpayment interest. Accordingly, [REDACTED] is not entitled to overpayment interest from March 15, [REDACTED] until September 15, [REDACTED].

If you have any questions, please call Attorney Michael E. Lueck (313) 237-6437.

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